

Introduced by Senator Murray

January 14, 2005

An act to add Section 653.15 to the Penal Code, relating to crime.

LEGISLATIVE COUNSEL'S DIGEST

SB 96, as amended, Murray. Peer-to-peer networks: file sharing software.

Existing law provides that it is a crime, punishable by a fine not exceeding \$2,500, imprisonment in a county jail for a period not exceeding one year, or by both that fine and imprisonment for a person who is located in California, who knows that a particular recording or audiovisual work is commercial, to knowingly electronically disseminate that commercial recording or audiovisual work to more than 10 other people without disclosing his or her e-mail address, and the title of the recording or audiovisual work. Existing federal law, through copyright, provides authors of original works of authorship, as defined, with certain rights and protections. Existing federal law generally gives the owner of the copyright the right to reproduce the work and the right to distribute copies of the work to the public. Existing federal law limits the liability of an Internet service provider for copyright infringement for transmitting material under specified conditions.

Existing law also provides that any person who accesses and without permission adds, alters, or damages data or programs that reside in a computer or computer system is punishable by a fine not exceeding \$10,000, by imprisonment in a county jail, or by imprisonment in a state prison for 16 months or 2 or 3 years, or by both fine and imprisonment.

This bill would provide that any person or entity that sells, advertises, or distributes peer-to-peer file sharing software, as defined, that enables the user to electronically disseminate recordings or audiovisual works over the Internet who fails to ~~exercise reasonable care in preventing~~ *incorporate available filtering technology into that software to prevent* use of the software to commit an unlawful act with respect to a commercial recording or audiovisual work, or a violation of provisions related to production, possession, distribution, or advertisement of obscene matter depicting a minor under 18 years of age, or tampering with, interference with, damage to, or unauthorized access to computer data or systems, is punishable by a fine not exceeding \$2,500, imprisonment in a county jail for a period not to exceed one year, or by both that fine and imprisonment. *This bill would provide that these provisions would not apply to computer operating system software, Internet browser software, an electronic mail service provider, or an Internet service provider, or transmissions via a personal network, or local area network.*

Because this bill would create a new crime, it would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 653.15 is added to the Penal Code, to
2 read:
3 653.15. (a) (1) Any person or entity that sells, offers for sale,
4 advertises, distributes, disseminates, provides, or otherwise
5 makes available peer-to-peer file sharing software that enables its
6 user to electronically disseminate commercial recordings or
7 audiovisual works via the Internet or any other digital network,
8 and who fails to ~~exercise reasonable care in~~
9 ~~preventing~~ *incorporate available filtering technology into that*
10 *software to prevent* use of that software to commit an unlawful

1 act with respect to a commercial recording or audiovisual work,
2 or a violation of Section 311.1, subdivisions (b), (c), or (d) of
3 Section 311.2, Section 311.3, 311.4, 311.10, 311.11, or 502 is
4 punishable, in addition to any other penalty or fine imposed, by a
5 fine not exceeding two thousand five hundred dollars (\$2,500),
6 imprisonment in a county jail for a period not to exceed one year,
7 or by both that fine and imprisonment.

8 (2) *This section shall not apply to the following:*

9 (A) *Computer operating system or Internet browser software.*

10 (B) *An electronic mail service or Internet service provider.*

11 (C) *Transmissions via a personal network or local area*
12 *network (LAN).*

13 (b) As used in this section, “peer-to-peer file sharing software”
14 means software that *contains a sequence of instructions written*
15 *in any programming language that is executed on a computer the*
16 *primary purpose of which, once installed and launched, enables*
17 *is to enable* the user to connect his or her computer to a network
18 of other computers on which the users of these computers have
19 made available ~~recording~~ recordings or audiovisual works for
20 electronic dissemination to other users who are connected to the
21 network. When a transaction is complete, the user has an
22 identical copy of the file on his or her computer and may also
23 then disseminate the file to other users connected to the network.

24 (c) As used in this section “recording” means the electronic or
25 physical embodiment of any recorded images, sounds, or images
26 and sounds, but does not include audiovisual works or sounds
27 accompanying audiovisual works.

28 (d) As used in this section “audiovisual work” means the
29 electronic or physical embodiment of motion pictures, television
30 programs, video or computer games, or other audiovisual
31 presentations that consist of related images that are intrinsically
32 intended to be shown by the use of machines or devices such as
33 projectors, viewers, or electronic equipment, or a computer
34 program, software, or system, as defined in Section 502, together
35 with accompanying sounds, if any.

36 (e) As used in this section, “commercial recording or
37 audiovisual work” means a recording or audiovisual work whose
38 copyright owner, or assignee, authorized agent, or licensee, has
39 made or intends to make available for sale, rental, or for
40 performance or exhibition to the public under license, but does

1 not include an excerpt consisting of less than substantially all of
2 a recording or audiovisual work. A recording or audiovisual
3 work may be commercial regardless of whether the person who
4 electronically disseminates it seeks commercial advantage or
5 private financial gain from that dissemination.

6 (f) As used in this section, “electronic dissemination” means
7 initiating a transmission of, making available, or otherwise
8 offering, a commercial recording or audiovisual work for
9 distribution on the Internet or other digital network, regardless of
10 whether someone else had previously electronically disseminated
11 the same commercial recording or audiovisual work.

12 (g) As used in this section, “electronic mail service provider”
13 means any person, including an Internet service provider, that is
14 an intermediary in sending or receiving electronic mail or that
15 provides to end users of the electronic mail service the ability to
16 send or receive electronic mail.

17 (h) As used in this section, “Internet service provider” means
18 an entity, to the extent that the entity is transmitting, routing, or
19 providing connections for Internet communications initiated by
20 or at the direction of another person, between or among points
21 specified by a user, of material placed online by a user, storing
22 or hosting that material at the direction of a user, or referring or
23 linking users to that material.

24 (i) As used in this section, “personal network” means a
25 restricted access network of linked computers controlled by, and
26 only accessible to, people in a single household.

27 (j) As used in this section, “local area network or LAN”
28 means a group of computers and associated devices that share a
29 common communication line or wireless link and typically share
30 the resources of a single processor or server, that usually stores
31 applications and data shared in common by multiple users,
32 within a small geographic area.

33 SEC. 2. The provisions of this act are severable. If any
34 provision of this act or its application is held invalid, that
35 invalidity shall not affect other provisions or applications that can
36 be given effect without the invalid provision or application.

37 SEC. 3. No reimbursement is required by this act pursuant to
38 Section 6 of Article XIII B of the California Constitution because
39 the only costs that may be incurred by a local agency or school
40 district will be incurred because this act creates a new crime or

1 infraction, eliminates a crime or infraction, or changes the
2 penalty for a crime or infraction, within the meaning of Section
3 17556 of the Government Code, or changes the definition of a
4 crime within the meaning of Section 6 of Article XIII B of the
5 California Constitution.

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